UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,644	01/06/2001	Alfred D. Roeske		4900

7590 01/02/2002

Steven J. Adamson, PC
P.O. Box 5997
Portland, OR 97228

EXAMINER	
TOOMER, CEPHIA D	

ART UNIT	PAPER NUMBER
1714	5

DATE MAILED: 01/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

T.D-5

Office Action Summary	Application No.	Applicant(s)	
	Examiner	Group Art Unit	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☐ R sponsive to communication(s) filed on _____.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-26 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The drawing(s) filed on 1/6/01 is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Interview Summary, PTO-413

☐ Notice of Informal Patent Application, PTO-152

☐ Oth r _____

Office Action Summary

DETAILED ACTION

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CAR 1.75(d)(1) and MPEP. § 608.01(o). Correction of the following is required: there is no support in the specification for the limitations of claims 4, 5, 9, 10, 11, 16, 24 and 25. Applicant should insert these limitations in an appropriate place in the specification.

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are rejected because there is no upper limit on the amount of free fatty acid present in the composition.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacLaren (US 2,159,218).

MacLaren teaches a wax composition suitable for preparing a candle comprising 0.5 to 5% hydrogenated fats and paraffin wax (see col. 1, lines 4-29) MacLaren teaches that the fats impart a better appearing opaqueness to the wax than 5% stearic acid (see col. 2, lines 2-8). MacLaren teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, MacLaren differs from the claims in that he does not specifically teach the claimed iodine value. However, it would be reasonable to expect that the fats of MacLaren possess these IV because he teaches that the fats are hydrogenated.

In the second aspect, MacLaren differs from the claims in that he does not specifically teach that stearic acid is present in his invention. However, it is *prima* obvious to combine two components, each known to be used for the same purpose, to form a third component, to be used

for the same purpose. In re Kerkhoven, 205 USPQ 1069 (CCPA 1980). MacLaren clearly teaches that stearic acid and hydrogenated fats are used to impact opaqueness to the paraffin wax.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Will (US 1,954,659).

Will teaches a candle composition comprising approximately 49% wax and 50% or more of hydrogenated vegetable oil and stearic acid (see col. 1, lines 4-32; claims 1-8). The preferred oil is rapeseed oil; however, other oils may be used (see lines 56-58). Will teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Will differs from the claims in that he does not specifically teach the claimed IV. However, it would be reasonable to expect that the oils of Will would possess the claimed IV because Will teaches that the oils are hydrogenated. Applicant has not shown that the oils of Will have an IV of 15 or greater (rapeseed oil) and even if rapeseed did at that time, it would not have that value now due to different manufacturing processes. Furthermore, Will teaches that other oils may be used.

In the second aspect, Will differs from the claims in that he does not specifically teach all of the claimed proportions of oil, paraffin and stearic acid. However, it is not inventive to determine the optimum amounts of these components by routine experimentation, especially in view of Will teaching that approximately 49% wax and approximately 51% of oil is present (claim 1), and that 50% or more of oil is combined with stearic acid (lines 18-21).

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao (US 6,284,007).

Tao teaches a vegetable lipid - base composition and candle comprising fully hydrogenated triglycerides and free fatty acids and paraffin wax (see col., lines 50-59; col. 2, lines 49-64). The free fatty acid and triglycerides are preferably saturated (see col. 3, lines 1-2). The composition may contain up to 49% wax and 51% free fatty acid/triglyceride mixture where in from 1-99% is triglyceride and from 1 to 99% is fatty acid (see Example 5).

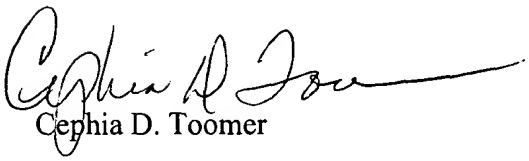
Tao also teaches compositions wherein no fatty acid is present (Example 1). Tao teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, Tao differs from the claims in that he does not specifically teach the claimed IV. However, it would be reasonable to expect that the triglycerides of Tao would possess the claimed IV because Tao teaches that the oils are fully hydrogenated.

In the second aspect, Tao differs from the claims in that he does not specifically teach all of the claimed proportions of triglyceride, paraffin and stearic acid. However, it is not inventive to determine the optimum amounts of these components through routine experimentation. A *prima facie* case of obviousness exist where the claimed ranges and the prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. *Titanium Metals v. Banner*, 227 USPQ 773 (Fed. Cir. 1985).

The prior art made of record but not relied upon is cited for teaching the general state of paraffin wax compositions and fatty materials used in preparing candles and is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication should be directed to Cephia Toomer at telephone number (703) 308-2509.



Cephia D. Toomer

Patent Examiner-1714

C. Toomer/dh

December 4, 2001